

1 NATHAN DOOLEY (SBN 224331)  
Ndooley@cozen.com  
2 Adam C. Bonin (*Pro hac vice*)  
COZEN O'CONNOR  
3 601 South Figueroa Street  
Suite 3700  
4 Los Angeles, California 90017  
Telephone: 213.892.7900  
5 Toll Free Phone: 800.563.1027  
Facsimile: 213.892.7999

6 Attorneys for Plaintiffs  
7 Kos Media and Markos Moulitsas Zúniga

8 *AND*

9 DELAIR D. ALI, *in pro per*  
10 10027 Sinnott Drive  
Bethesda, MD 20817  
Defendant



11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 KOS MEDIA, LLC and  
16 MARKOS MOULITSAS ZÚNIGA,

17 PLAINTIFFS,

18 VS.

19 RESEARCH 2000 AND DELAIR D. ALI,

20 DEFENDANTS.  
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Case No.: 3:10-CV-02894 MEJ-

JOINT STATUS REPORT

CMC Hearing Date: July 28, 2011  
Time: 10:00 AM  
Courtroom: B

Complaint filed: June 30, 2010.

26 Plaintiffs Kos Media, LLC and MARKOS MOULITSAS ZÚNIGA (Plaintiffs),  
27 and Defendant Delair D. Ali, *in pro per*, respectfully submit this Status Report  
28 regarding the parties' prospective settlement.

## **BACKGROUND**

### **1) The Parties**

Plaintiff Kos Media LLC (“Kos Media”) is based in Berkeley California. It owns and operates the DailyKos (<http://www.dailykos.com>), the largest progressive community blog in the United States. Markos Moulitsas Zúniga is the founder, publisher, and sole owner of Kos Media. Defendant Research 2000 is a polling firm based in Olney, Maryland. Delair D. Ali (“Ali”) is the owner and CEO of Research 2000.

### **2) The Complaint**

As part of its role as a news organization, Kos Media commissioned a number of polls from Research 2000, beginning in September 2007. Kos Media and Research 2000, through Moulitsas and Ali, entered into a series of agreements through which Kos Media would pay Research 2000 for political polling performed based on certain professional standards, including requirements for the number of individuals surveyed for each poll. Defendants breached their agreement with Kos Media by failing to perform the polls which they were contracted to provide, instead falsifying the data provided to the Kos Media.

The Complaint sets forth the following causes of action: 1) Breach of Contract; 2) Unfair Business Practices under Cal. Bus. & Prof. Code §§ 17200 et seq.; 3) Breach of Implied Warranty; 4) Intentional Misrepresentation; 5) Negligent Misrepresentation; 6) Constructive Fraud; and 7) Conversion.

### **3) Procedural History**

Plaintiffs filed suit on June 30, 2011. The Complaint was timely served on Defendants. On behalf of himself, and Research 2000, Ali signed a waiver of service on or about August 05, 2010. In the cover letter returning the waiver of service, Ali’s

1 counsel stated that they would file a responsive pleading on or before September 07,  
2 2010.

3 The parties made progress toward a settlement, and reached a general  
4 understanding before Defendants' responsive pleading was due. Plaintiffs notified the  
5 Court of the pending settlement. On September 09, 2010, the deadline for filing a  
6 responsive pleading was extended by Court Order and pursuant to stipulation. (Doc.  
7 No. 9.) The settlement agreement was signed by the parties.

8 The matter was set for a Case Management Conference for December 02,  
9 2010. (*Id.*) The Case Management Conference was continued to January 13, 2011  
10 pursuant to stipulation and Court Order. (Doc. No. 11.) On December 21, 2010  
11 counsel for Defendants moved to withdraw from the case. (Doc. No. 12.) That  
12 Motion was granted on January 06, 2011, leaving Defendants unrepresented by  
13 counsel. (Doc. No. 16.) The Case Management Conference was continued to March  
14 10, 2011. (Doc. No. 18.)

15 In lieu of the Case Management Conference on March 10, 2011, the Court  
16 issued an Order continuing the Case Management Conference to April 28, 2011. (Doc  
17 No. 22.) The Court also entered an Order requiring that Research 2000 procure  
18 counsel. (Doc. No. 22.) Also on April 28, 2011, the Court ordered the parties to file  
19 a joint Status Report. (*Id.*)

20 Research 2000 failed to procure counsel. Because Research 2000 was not able  
21 to procure counsel, the Court entered default as to Research 2000 on May 19, 2011  
22 pursuant to Civil Local Rule 3-9(b). (Doc. No. 25.) In advance of a CMC hearing set  
23 for June 09, 2011, the parties filed a Joint Status Report. In view of that Report, the  
24 Court continued the CMC hearing to July 21, 2011 and ordered the parties to file the  
25 instant Joint Report by July 21, 2011. (Doc. No. 29.)  
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**STATUS**

Plaintiffs have not yet moved for entry of default Judgment as to Research 2000 due to the Rule against piecemeal judgments. *See* Fed. R. Civ. P. 54(b).

With respect to Defendant Delair Ali, he sent a payment of \$9,000 to Plaintiffs' counsel on or about April 12, 2011. Plaintiffs characterize this payment as progress. While Mr. Ali was unable to make the further payment predicted by the last status report, Mr. Ali has repeatedly insisted that he fully intends to make good on the amounts required by the settlement agreement, and soon, which will in turn yield the resolution both parties seek. While Plaintiffs have been unable to collect on additional significant payments, and Mr. Ali has been unable to make payments at a rate which either he or Kos Media would like, he continues to be cooperative and communicative and Plaintiffs would prefer to avoid the additional expense of default proceedings at this time.

This Court's last Order, and all previous Court Orders, were timely served on Defendants.

Counsel for Plaintiffs will file a request to appear telephonically at the hearing scheduled for July 28, 2011.

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**RECOMMENDATION**

In view of these facts, the parties respectfully submit that the Case Management Conference be continued for 60 days to allow time for Plaintiff to make additional payments and come current on the settlement. If the payment does not clear, or if a substantial payment is not made within 60 days, Plaintiffs shall move for entry of default as to Ali.

Date: July 21, 2011

\*Emails authorizing signature attached as Exhibit A.

By: -/S/-  
Delair Ali, *in pro per*  
10027 Sinnott Drive  
Bethesda, MD 20817

Date: July 20, 2011

COZEN O'CONNOR

By: -/S/-  
NATHAN DOOLEY  
ADAM C. BONIN  
Attorneys for Plaintiffs  
COZEN O'CONNOR  
601 South Figueroa Street  
Suite 3700  
Los Angeles, California 90017  
Telephone: 213.892.7900  
Toll Free Phone: 800.563.1027  
Facsimile: 213.892.7999

The CMC is continued to September 29, 2011 at 10:00 a.m. A joint cmc statement shall be filed by September 22.